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September 6, 2024

VIA ECF

The Honorable Margaret M. Garnett
United States District Court
for the Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square, Room 2102
New York, NY 10007

Re: *World Association of Icehockey Players Unions North America Division, et al. v. National Hockey League, et al.*, No. 24-cv-01066 (MMG)

Dear Judge Garnett:

Pursuant to Rule I(D)(3)(ii)-(iii) of Your Honor's Individual Rules and Practices, Plaintiffs submit this letter motion requesting that the Court permit Plaintiffs to provisionally file under seal and redacted on the public docket: (1) portions of their memorandum opposing the Major Junior Defendants'¹ motion to dismiss on personal jurisdiction grounds and (2) a partial paragraph and certain exhibits to the Declaration of Judith Zahid submitted in support thereof. The redacted memorandum and declaration and the sealed exhibits have been contemporaneously filed on ECF under seal as "Attorneys' Eyes Only" and electronically related to this letter motion.

The proposed sealed exhibits consist of: (1) documents the Major Junior Defendants produced to Plaintiffs designated as "Highly Confidential Outside Attorneys' Eyes Only," and (2) interrogatory responses designated as "Highly Confidential Outside Attorneys' Eyes Only." The proposed redactions to Plaintiffs' memorandum and the Zahid Declaration seek to protect material that is quoted or paraphrased from those documents designated as Highly Confidential.

"Although '[t]he common law right of public access to judicial documents is firmly rooted in our nation's history,' this right is not absolute, and courts 'must balance competing considerations against' the presumption of access." Order (June 26, 2024) (ECF 142) (quoting *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2d Cir. 2006)). "Courts commonly find that documents that contain trade secrets, confidential research and development

¹ The "Major Junior Defendants" are the Canadian Hockey League ("CHL"), Dan MacKenzie, the Western Hockey League ("WHL") and all of the clubs that play in the WHL, the Ontario Hockey League ("OHL") and all of the clubs that play in the OHL, and the Quebec Major Junior Hockey League ("QMJHL") and all of the clubs that play in the QMJHL.

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information, marketing plans, revenue information, pricing information, and the like satisfy the sealing standard.” *Kewazinga Corp. v. Microsoft Corp.*, No. 1:18-CV-4500-GHW, 2021 WL 1222122, at *3 (S.D.N.Y. Mar. 31, 2021) (quoting *Rensselaer Polytechnic Inst. v. Amazon.com, Inc.*, 2019 WL 2918026, at *2 (N.D.N.Y. June 18, 2019)).

The parties have agreed to treat all discovery produced prior to entry of a protective order in this matter as Highly Confidential on a provisional basis. The parties are actively negotiating the terms of a proposed protective order to submit to the Court in short order.

On September 5 and 6, 2024, counsel for the Plaintiffs and the Major Junior Defendants conferred regarding the proper treatment of documents designated as “Highly Confidential Outside Attorneys’ Eyes Only” by the Major Junior Defendants. The parties agreed to provisionally submit the documents under seal and/or redacted in accordance with their assigned confidentiality designations, pending the Major Junior Defendants’ review of the confidential information in context and/or entry of any protective order governing the use of confidential information.

Accordingly, Plaintiffs respectfully request that the Court grant this letter motion to file under seal and redacted on the public docket: (1) the designated portions of Plaintiffs’ opposition memorandum to the Major Junior Defendants motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(2) and (2) the designated portions of Paragraph 5 and Exhibits 1-11 and 13 of the Zahid Declaration in support thereof.

Sincerely,

/s/ Jeffrey I. Shinder
Jeffrey I. Shinder

cc: All counsel of record (via ECF)

The request to file the specified documents in redacted form and under seal is *provisionally* GRANTED. **Within seven days of the entry of a protective order**, if any party seeks to continue the redactions or sealing of some or all of the specified documents, the party seeking to do so must provide the Court, by letter-motion, with the basis for continuing the redactions or sealing as to each of the requested documents.

The Clerk of Court is directed to terminate Dkt. No. 178.

SO ORDERED. Date 9/10/2024


HON. MARGARET M. GARNETT
U.S. DISTRICT JUDGE